

## FORMAT FOR AARHUS CONVENTION IMPLEMENTATION REPORT

The following report is submitted on behalf of the Czech Republic in accordance with decision I/8 and II/10

<b>Name of officer responsible for submitting the national report:</b>	Ing. Tomáš Kažmierski
<b>Signature:</b>	
<b>Date:</b>	

### IMPLEMENTATION REPORT

Please provide the following details on the origin of this report

<b>Party</b>	<b>Czech Republic</b>
<b>National focal point</b>	
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Provide brief information on the process by which this Report was prepared, including information on which types of public authorities were consulted or contributed to its preparation, on how the public was consulted and how the outcome of the public consultation was taken into account and on the material which was used as a basis for preparing the report.

*Answer: The Report was prepared by the Ministry of the Environment in co-operation with the Green Circle, an umbrella organisation of environmental non-governmental organisations; the source materials were obtained from the relevant sectors, sectoral organisations of the Ministry of the Environment and the regions. The NGOs took an active part in both the preparation of the source materials for the Report and circulation of drafts of the Report for comments (through the umbrella organisation, the Green Circle).*

Report any particular circumstances that are relevant for understanding the Report, e.g. whether there is a federal and/or decentralized decision-making structure, whether the provisions of the Convention have a direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).

*Answer: The co-ordination body for implementation of the Aarhus Convention is the Ministry of the Environment, which closely co-operates with other sectors as well as environmental NGOs to evaluate the status of implementation of the Aarhus Convention.*

*To fulfil the obligations adopted in the Aarhus Convention, activities of not only the central governmental authorities, but also those of local and regional authorities (14), district and regional courts, high courts and the Supreme Administrative Court and the Supreme Court are of critical importance.*

*According to interpretation provided by the Supreme Administrative Court, the provisions of the Aarhus Convention are not directly applicable. The Convention is being implemented through national laws. The system of legislation is described in the respective articles of the Report.*

### **ARTICLE 3 - GENERAL PROVISIONS**

List legislative, regulatory and other measures that implement the general provisions in paragraphs 2, 3, 4, 7 and 8 of article 3.

Explain how these paragraphs have been implemented. In particular, describe:

- a) With respect to **paragraph 2**, measures taken to ensure that officials and authorities assist and provide the required guidance;
- b) With respect to **paragraph 3**, measures taken to promote education and environmental awareness;
- c) With respect to **paragraph 4**, measures taken to ensure that there is appropriate recognition of and support to associations, organizations or groups promoting environmental protection;
- d) With respect to **paragraph 7**, measures taken to promote the principles of the Convention internationally;
- e) With respect to **paragraph 8**, measures taken to ensure that persons exercising their rights under the Convention are not penalized, persecuted or harassed.

*Answer:*

*Re a): Government officials are usually familiarised, within their initial training, with the aspects of access of the public to information on the environment (Act No. 123/1998 Coll., on free access to information on the environment, and Act No. 106/1999 Coll., on free access to information). The requirements of the Aarhus Convention are reflected in a number of regulations within the legislation of the Czech Republic; more specifically, a number of regulations contain provisions fulfilling the requirements of the Aarhus Convention (the Code of Administrative Procedure, Code of Administrative Justice, Construction Code, Environmental Impact Assessment Act, Nature Conservation and*

Landscape Protection Act, etc.). The officials are also familiarised with these regulations, whether during the initial training or in the form of on-going education. The Convention is implemented, e.g., through Section 4 of the Code of Administrative Procedure (public administration is a service to the public; the duty to behave politely and attempt to satisfy the requirements of the citizens) and also through Section 15 of Act No. 100/2001 Coll., on environmental impact assessment (preliminary discussion).

Re b): In 2000, the Czech Government approved, through its Resolution No. 1048/2000, the **State Programme of Environmental Communication, Education and Public Awareness (SP ECEPA)**, which is regularly updated by means of four-year action plans. The main guarantors of the programme include the Ministry of Education, Youth and Sports for the area of ECEPA within the school system and the Ministry of the Environment, which provides ECEPA for the general public, public administration, extracurricular activities of children and youth and the industry. A special website for children – <http://detem.mzp.cz/> as well as a number of competitions that familiarise children with the aspects of environmental protection have been developed within this action. The State Programme is followed up by the regional strategies of ECEPA, which are elaborated at the regional level by the regional authorities. The financing of ECEPA is ensured both from national sources and through the EU funds; support is provided for networks of eco-centres and eco-clinics, kindergartens, schools, university teachers, etc. that/who disseminate ECEPA among broad target groups of citizens. The duty to support environmental communication, education and public awareness at the national and regional levels is stipulated by Section 13 of Act No. 123/1998 Coll., on free access to information on the environment.

Re c): A group of programmes concerned with public participation in environmental decision-making and sustainable development at the regional level and a group of programmes concerned with environmental communication, education and public awareness are annually included in the MoE's tender procedure for **support of projects submitted by NGOs**. The activities of the NGOs are also supported by the Ministry of Agriculture, Ministry of Education and regions and cities. The establishment and activities of civic associations are regulated by the Association of Citizens Act. Those associations that focus on nature conservation and landscape protection are able to take part in the relevant administrative proceedings, in educational programmes and in the circulation of draft legal regulations for comments in respect of those regulations that are being developed within the competence of the Ministry of the Environment. Civic associations find their legal basis in the following regulations: Act No. 40/1964 Coll., the Civil Code, Act No. 83/1990 Coll., on association of citizens; tax exemptions are stipulated in Act No. 235/2004 Coll., on value added tax, Act No. 586/1992 Coll., on income taxes, and others.

Re d): There currently exist no uniform binding rules governing compulsory **participation of representatives of non-governmental organisations (NGOs) in State delegations** at international forums concerned with the environment. It is up to the discretion of the individual central governmental authorities whether or not they will invite NGOs to participate. In 2007, the Ministry of the Environment drew up a sample agreement on participation of NGOs in a delegation of the Czech Republic led by the Ministry of the Environment in international negotiations; the agreement specifies the obligations and rights of NGOs and the Ministry of the Environment in international negotiations where an NGO is part of the Czech delegation. The Czech Republic

*employs the principles of the Aarhus Convention, e.g., in the framework of the OECD; it was the first party to invite NGOs to the preparation and final discussion of the EPR. The Czech Republic supports opening of the meetings of the OECD's Environment Policy Committee to all special-interest groups, including NGOs. The former Minister of the Environment of the Czech Republic, JUDr. Jan Dusík M.Sc, is the chairman of the bureau of the Aarhus Convention for the 2008-2011 period. In November 2009, J. Dusík chaired an intergovernmental meeting on the preparation of global guidelines to promote implementation of Principle No. 10 of the Rio Declaration (access of the public to environmental information, public participation in decision-making and access to justice in environmental matters). These guidelines were adopted at the 11<sup>th</sup> special session of the UNEP GC/GMEF (24 to 26 February 2010) at Bali.*

*Within its Presidency in the EU Council, the Czech Republic organised an international conference on the practical application of the provisions of the Aarhus Convention in the area of access to justice in environmental matters (16 to 17 April 2009).*

*Re e): Art. 3 (8) of the Convention is dealt with in the Charter of Fundamental Rights and Freedoms, which is part of the Constitution of the Czech Republic. “**Freedom of expression** and the right to information” are one of the fundamental constitutional rights (cf. Art. 17 of the Charter). This also entails the right to express opinions, prohibition of censorship, etc. These rights may be limited only by law and only on grounds stipulated by law (cf. Art. 17 (4) of the Charter). The right of association and assembly (cf. Art. 19 and 20 of the Charter) is also relevant in this respect. Art. 3 (3) and Art. 4 (1) of the Charter apply subsidiarily. Persons exercising their rights are not penalised or otherwise punished in the Czech Republic. There may be cases where a certain person is not allowed to exercise his rights; however, any penalisation or other punishment by the State is out of the question.*

**Describe any obstacles encountered in the implementation of any of the paragraphs of article 3 listed above.**

*Answer:*

*As obstacles to practical implementation of the Convention, we could mention, e.g., the insufficient practical skills of public administration in respect of public participation, and also insufficient education of judges in the aspects of environmental protection, the generally low public participation in decision-making on environmental matters and the well-known conflicts and mutual insults between public administration and certain environmental organisations in resolving administrative disputes in the area of environmental protection. The fact that the Aarhus Convention is not reflected in the area of administration of cultural and architectonic monuments (cf. Art. 2 (3) (c)) is also an issue – the Heritage Act does not deal with access to information, public participation or access to justice.*

**Provide further information on the practical application of the general provisions of the Convention.**

**Give relevant web site addresses, if available:**

<http://www.ucastverejnosti.cz/>

#### **ARTICLE 4 - ACCESS TO INFORMATION**

List legislative, regulatory and other measures that implement the provisions on access to environmental information in Article 4.

Explain how each paragraph of article 4 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

- a) With respect to **paragraph 1**, measures taken to ensure that:
  - (i) Any person may have access to information without having to state an interest;
  - (ii) Copies of the actual documentation containing or comprising the requested information are supplied;
  - (iii) The information is supplied in the form requested;
- b) Measures taken to ensure that the time limits provided for in **paragraph 2** are respected;
- c) With respect to **paragraphs 3 and 4**, measures taken to:
  - (i) Provide for exemptions from requests;
  - (ii) Ensure that the public interest test at the end of paragraph 4 is applied;
- d) With respect to **paragraph 5**, measures taken to ensure that a public authority that does not hold the environmental information requested takes the necessary action;
- e) With respect to **paragraph 6**, measures taken to ensure that the requirement to separate out and make available information is implemented;
- f) With respect to **paragraph 7**, measures taken to ensure that refusals meet the time limits and the other requirements with respect to refusals;
- g) With respect to **paragraph 8**, measures taken to ensure that the requirements on charging are met.

*Answer:*

*Implementation of Art. 4 is ensured particularly through Act No. 123/1998 Coll., on free access to information on the environment, and Act No. 106/1999 Coll., on free access to information. Access to information may be limited only in cases stipulated by law, e.g. on the grounds of protection of confidential information (cf. Act No. 412/2005 Coll.), personal data (cf. Act No. 101/2000 Coll.), intellectual property (cf. Act No. 527/1990 Coll.), etc. As a Member State of the European Union, the Czech Republic has also transposed Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC.*

*Re a): Access to information is regulated by Act No. 123/1998 Coll., on free access to*

information on the environment, as amended. Although the requirements of this article are directly implemented by the aforementioned Act, information is often required in practice pursuant to Act No. 106/1999 Coll., on free access to information, and the obliged entities also provide information pursuant to this Act. It is therefore also necessary to mention the latter legal regulation and the consequences of its application.

*Re a) (i): From this viewpoint, the Act on Free Access to Information on the Environment is fully compatible; indeed, pursuant to Section 2 (c), applicants are individual natural or legal persons who have applied for information.*

*Re a) (ii): Updating of databases and information is regulated by Section 10a of the Act on Free Access to Information on the Environment. Copying of documents is regulated by Section 10 of the said Act.*

*Re a) (iii): **The method and form of making information available** is regulated by Section 6 of the Act on Free Access to Information on the Environment. In the application, the applicant may propose the form or manner of making the information available. If the applicant does not determine the form or manner, or if the relevant form or manner cannot be used for important reasons, the manner and form of disclosing the information shall be chosen in order to achieve the objective of the application for information and its best possible use by the applicant. In case of doubt, the form and manners used by the applicant to submit the application are preferentially used. If the obliged entity makes the information available, at least partly, in a form other than requested, it must state the reasons for this procedure.*

*Re a) (iii): **The time limits** for making information available are regulated by Section 7 (1) of the Act on Free Access to Information on the Environment. This provision fully corresponds to the requirements of the Convention. Furthermore, a mention could be made of Section 9 (3) of the same Act, which provides for a “fictitious decision” in cases where information is not provided or decision rendered. A fictitious decision may be appealed pursuant to the Code of Administrative Procedure.*

*Re c) (ii): **Limitation of access** to information is regulated by Section 8 of the Act on Free Access to Information on the Environment. Information is refused in the following cases: confidential information, personal data protection, protection of intellectual property and protection of business secrets. In some other cases, information may (but need not) be refused, e.g.: potential unfavourable environmental impact of making the information available; information within preparatory proceedings in criminal matters; anonymous, obstructive, provoking or incomprehensible application that has not been supplemented in spite of request; or the applicant already has the information available. After elimination of all the facts on the grounds of which information may be refused, the remaining part of the information must be provided, on the condition that this procedure is feasible. The right to refuse information is applicable only during the term of existence of the grounds for refusal. A special regime is applicable to information on emissions, where certain grounds for refusal of information do not apply.*

*Re c) (ii): The Czech legislation does not provide for any “test of public interests”. However, e.g., information may not be refused on the grounds of business secrets if there is an imminent danger to human health or the environment (Section 8 (4) (b) of the Act on Free Access to Information on the Environment).*

*Re d): The Czech legislation practically literally cites the wording of the Convention (Section 4 of the Act on Free Access to Information on the Environment). However, in practice, compliance with this provision is hindered by inaccurate and unclear provisions of law (authorities are often uncertain as to what information they are obliged to collect).*

*Re e): The Convention's requirement to **separate out and make available information** is embodied in Section 8 (6) of the Act on Free Access to Information on the Environment.*

*Re f): The Convention's requirement that refusals **meet the time limits** is embodied in Section 9 of the Act on Free Access to Information on the Environment (in combination with the provisions of the Code of Administrative Procedure defining the requirements on the contents and form of a decision, i.e. written and reasoned decision with advice on appeal); in case of inactivity within the statutory time limit, the Czech legislation establishes the fiction of a decision on refusal of information.*

*Re g): The Convention's requirement for **reasonable charges** is met. Information is provided free-of-charge; payment is made only for the costs of making copies, technical data carriers and postal charges. The tariffs of these payments are publicly accessible (cf. Section 10 (3) and (4) of the Act on Free Access to Information on the Environment).*

**Describe any obstacles encountered in the implementation of any of the paragraphs of article 4.**

*Answer:*

*The Czech legislation, which is only concerned with narrower aspects of the provision of information is, **in principle, satisfactory**. However, in addition to further issues mentioned below, it is necessary to resolve, either by legal or methodical means, those situations where **an application for information is lodged with the competent authority, which, however, lacks the required information**, although it can be inferred that it is obliged to have this information included in its public administration information system and subsequently provide it. This is an issue that is related particularly with Art. 5 of the Convention, i.e. the "duty of the authorities to possess the relevant information, to establish information systems providing for adequate flow of information to public authorities".*

*Disputable interpretation of **what is and what is not information on the environment** is another practical issue. The obliged entities point out that, in practice, it is often very difficult to distinguish whether the required information falls within the regime of the general Act on Free Access to Information or whether it constitutes information on the environment pursuant to the Act on Free Access to Information on the Environment. These two Acts stipulate different deadlines for the provision of information, as well as different remedies, requirements on payment of the costs of provision of information and also different provisions on court protection. Problems could arise in those cases where the applicant requests, within a single application, information that is partly information on the environment and partly other information. The obliged entity should then apply a dual procedure (separately pursuant to the Act on Free Access to Information on the Environment and separately pursuant to the Act on Free Access to Information). Problems can also be encountered in cases where an applicant requests information which he considers to be information on the environment and the obliged entity provides it, but in the regime of the general Act on Free Access to Information, on the grounds that the information in question is not information on the*

environment, in which case the obliged entity has the right to claim compensation for the costs of seeking out and providing the information, unlike under the procedure pursuant to the Act on Free Access to Information on the Environment, where information is provided free-of-charge. The applicant has the right to raise a complaint against the amount of payments for the provision of information pursuant to Section 16 (a) of the Act on Free Access to Information.

There exist two other distinct regimes: general provision of information on the basis of the right to information (pursuant to the Act on Free Access to Information on the Environment) and **inspection of a file** as a means of exercising a procedural right (pursuant to the Code of Administrative Procedure and the Construction Code). The relationship between these two regimes raises practical issues in specific cases; however, case-law is already available in this respect. In practice, there need not always be a clear guidance as to whether the requested information may be disclosed on the basis of the Act on Free Access to Information on the Environment (right of every person) or whether it may be refused on the basis of the Construction Code, where the right to information is vested only in a party to the proceedings (this is a case of refusal of the right to inspect the file or documents).

In their case-law, the courts have also dealt with the term “**public entity obliged to provide information**”. In its judgment of 6 October 2009, File No. 2 Ans 4/2009-93, the Supreme Administrative Court reached the conclusion that the relevant elements of this term include: manner of establishment, identity of the founder, manner of creating bodies, State supervision and public purpose. The existence of a majority of these elements is sufficient to classify an entity as a public institution. Consequently, public entities include, not only bodies of public administration, but also a wide range of entities founded by public entities to fulfil a public purpose.

Experience of the NGOs indicates that difficulties in implementation of Art. 4 are caused by **insufficient legal protection and possibility to achieve rapid and effective remedy** in the event of refusal of information. In a number of cases, court review is slow and ineffective. The average duration of hearing a certain case in administrative justice is several months, the ratio of decisions rendered by appellate courts varies around 30 % and, very often, these decisions are not final, but the case is rather returned to the court of lower instance for a final decision. When the court satisfies the claim, it is often too late – the information is no longer up-to-date.

Provide further information on the **practical application of the provisions on access to information**, e.g. are there any statistics available on the number of requests made, the number of refusals and their reasons?

Answer:

Of relevance in this respect is also the Report on Experience Obtained in Implementing Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC, since its entry into force. It follows from the Report that neither regions nor central authorities have any fundamental objections to the manner of operation of Act No. 123/1998 Coll., on free access to information on the environment. The Report indicates the following statistical data:

• **Number of applications submitted**

At the national level, the following entities received the respective numbers of applications:

- Ministry of the Environment – annually deals with or forwards to the professional



departments over three thousand applications for information (3107 applications were dealt with in 2005, 3150 in 2006 and 3830 in 2007). Further applications are dealt with in the competence of Departments of State Administration I-IX in the sense of Act No. 123/1998 Coll.

- Ministry of Transport – 1 application since 2004
- Ministry of Foreign Affairs – 1 application (relating to infringement proceedings); the application was re-classified as an application pursuant to Act No. 106/1999 Coll. and (together with 5 similar applications) rejected (cf. Section 11 (4) (b) of Act No. 106/1999 Coll.)
- Ministry of the Interior; Ministry of Culture; Ministry of Justice; Ministry for Regional Development; Ministry of Labour and Social Affairs; Ministry of Agriculture; Ministry for Human Rights and Minorities; Legislative Council of the Government – 0 applications
- Ministry of Industry and Trade; Ministry of Finance – when they receive an application, they refer the applicant to the Ministry of the Environment

A majority of **regions** do not keep statistics of submitted applications. Where these are kept, they indicate that the number of applications varies between **10 and 25 per year**. In most cases, the number varies around 15. The Southern Moravian Region, which once received 30 applications during a year, and the Hradec Králové Region, which received zero applications in 2008, are extreme cases.

• **Areas with which applications for information are concerned**

Nature conservation and landscape protection, waste management, environmental impact assessment, air protection, water management, possibility of drawing subsidies.

• **Percentage of applications dealt with within the one-month deadline and applications dealt with within an extended deadline**

In all regions that keep statistics, over **98 %** of applications were dealt with within the one-month deadline.

• **Percentage of accepted/rejected applications; in case of refusal, please provide an overview according to exemptions referred to in the refusal**

**In a vast majority of cases, regions provide the requested information.** The Plzeň Region states that, over the period of last 5 years, information has been refused only in 2 cases. The applications were refused on the grounds that the information sought was concerned with pending administrative proceedings. **Of the total of 105 applications, the Ústí Region rejected 6.** Two of these applications were formulated in excessively general terms; in respect of the four remaining, the authority did not possess the required information.

Give relevant web site addresses, if available:

[www.ucastverejnosti.cz](http://www.ucastverejnosti.cz)

[www.otevrete.cz](http://www.otevrete.cz)

## ARTICLE 5 – ACTIVE DISSEMINATION OF INFORMATION

List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in Article 5.

Explain how each paragraph of article 5 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

- a) With respect to **paragraph 1**, measures taken to ensure that:
  - (i) Public authorities possess and update environmental information;
  - (ii) There is an adequate flow of information to public authorities;
  - (iii) In emergencies, appropriate information is disseminated immediately and without delay;
- b) With respect to **paragraph 2**, measures taken to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible;
- c) With respect to **paragraph 3**, measures taken to ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks;
- d) With respect to **paragraph 4**, measures taken to publish and disseminate national reports on the state of the environment;
- e) Measures taken to disseminate the information referred to in **paragraph 5**;
- f) With respect to **paragraph 6**, measures taken to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products;
- g) Measures taken to publish and provide information as required in **paragraph 7**;
- h) With respect to **paragraph 8**, measures taken to develop mechanisms with a view to ensuring that sufficient product information is made available to the public;
- i) With respect to **paragraph 9**, measures taken to establish a nationwide system of pollution inventories or registers.

*Answer:*

*The provision on collection and dissemination of environmental information pursuant to Article 5 is implemented by Act No. 123/1998 coll., on free access to information on*

the environment. Specifically, this is true of Section 10a (active disclosure of information) and Section 12 (report on the state of the environment). In respect of exercise of administrative agendas and fulfilment of information duties, the fundamental legislative basis for automated operation of information systems is provided by Act No. 365/2000 Coll. of 14 September 2000, on information systems of public administration and on amendment to some related laws. On 12 August 2009, the Czech Republic also ratified the Protocol on Pollutant Release and Transfer Registers (PRTR) (No. 108/2009 Coll. Int. Tr.).

Re a) (i): **The Report on the State of the Environment** of the Czech Republic is drawn up each year at the **central level**. This is a comprehensive evaluation document that summarises the current knowledge of the state and development of the individual components of the environment, effect of the economic sectors on the environment, instruments of environmental policy, impact of the current state of the environment on human health and ecosystems and the state of the environment in an international context. The Report also aims to evaluate the implementation of the State Environmental Policy and to identify new priority areas that should be dealt with within the Policy. The Report on the Environment of the Czech Republic is drawn up and submitted by the Ministry of the Environment to the Government each year; it is then published on the website of the Ministry of the Environment.

Along with the Reports on the State of the Environment, the periodical **Statistical Yearbook on the Environment** of the Czech Republic is published to provide a comprehensive picture of the state of the environment in the Czech Republic on the basis of the specific data on the basic causes of changes in the environment and the relevant factors, information on the state of the components of the environment, certain consequences of the changes and instruments that can be utilised to direct and affect the policy of creation and protection of the environment.

Information pertaining to the environment is submitted to the Ministry of the Environment also by some other ministries. For example, the Ministry of Finance thus submits for further processing information on expenditures for environmental protection from the State budget, in classification to central and locally founded organisations.

Analogously, reports on the state of the environment are also drawn up in the individual regions. The underlying data are updated from time to time. The form of reports is annually modified and sets of indicators are supplemented. Overviews of the largest polluters are also issued and published on the basis of information obtained from the **Integrated Pollution Register (IPR)**. Since 2008, the operation of the IPR has been regulated by a separate legal regulation – Act No. 25/2008, on the Integrated Pollution Register, which stipulates a list of pollutants and thresholds, as well as data that must be reported to the Integrated Pollution Register. Based on the EU Regulation on the European Pollutant Release and Transfer Register (166/2006/EC), the two legal regulations delimit the scope of the data reported to the IPR from the reporting year 2009. The Czech Republic has also ratified the Protocol on Pollutant Release and Transfer Registers. Furthermore, there also exist various databases and information systems operated by other entities – the MoE, CENIA, GEOFUND, ANCLP CR, CHMI, etc.

In 2007, the Ministry of Health drew up **strategic noise maps of the Czech Republic** in accordance with the requirements of Directive 2002/49. Information on the

results of the strategic noise mapping are provided both at the seat of the Ministry of Health and on the information server of the Ministry of Health. The Ministry of Health also publishes information on drinking water and water for bathing pursuant to Act No. 258/2000 Coll., on protection of public health.

The annually published **Yearbook on Organic Farming** summarises information on organic farming and organic products in the Czech Republic. Further information relevant for the subject of the Convention is collected by the Ministry of Agriculture, e.g., in the “Monitoring of Foreign Substances” programme, which includes monitoring of foreign substances in the food chain, not only in food, but also in raw materials. The monitoring is already commenced in respect of inputs to the food chain, i.e. in animal feed, land, water, air, forest and water ecosystems, i.e. it begins at the stage where food safety can be threatened. The results are evaluated and published every year. Certain information on the indicators of the quality of the environment are also contained in the regularly published document entitled “Agriculture”. All the aforementioned documents and also some other information, publications and reports are publicly accessible on the website of the Ministry of Agriculture at [www.mze.cz](http://www.mze.cz).

Information on the environment is also provided by the **cities, towns and municipalities** of the Czech Republic in the form of yearbooks or web presentations. The internet is increasingly used, e.g. to answer most frequently asked questions of the citizens.

Re a) (ii): The **supply of information is ensured from** the Czech Statistical Office, organisations of the Ministry of the Environment – e.g. the Czech Hydrometeorological Institute, the Czech Environmental Inspectorate, the State Environmental Fund, the Agency for Nature Conservation and Landscape Protection of the Czech Republic, sectoral organisations of the Ministries of Agriculture, Health, the Interior, Transport, Industry and Trade, and others, and from other central bodies, such as the State Office for Nuclear Safety, the National Institute of Public Health, etc.

Re a) (iii): Dissemination of information on the environment in **emergencies** is regulated by Act No. 239/2000 Coll., on the integrated rescue system and amendment to some laws, as amended, (information system for preventive and rescue measures in the area of mobile sources of danger - <http://cep.mdcz.cz/dok2/DokPub/dok.asp>), and by Act No. 240/2000 Coll., the Crisis Act. For early warning of citizens, the municipalities also employ, e.g., SMS messages, broadcasting by regional electronic media and other means (e.g. website of the public administration portal: <http://portal.gov.cz>).

Re b): All the relevant information, including information systems in the following areas, is published on the **Internet**:

- environmental impact assessment (EIA/SEA)

(<http://tomcat.cenia.cz/eia/view.jsp>; <http://eia.cenia.cz/sea/koncepce/prehled.php>)

- integrated pollution prevention and control (IPPC) (<http://www.env.cz/ippc>, [www.ippc.cz](http://www.ippc.cz))

- Integrated Pollution Register (IPR) (<http://www.irz.cz>) and others.
- information from the Ministry of Agriculture are provided at [www.mze.cz](http://www.mze.cz).

The portal of the Czech Environmental Information Agency (<http://portal.cenia.cz>) and the website of the Agency itself (<http://www.cenia.cz>) serve to make available information on the environment that falls within its competence. In addition, CENIA maintains a metainformation system (MIS) (<http://mis.cenia.cz>) which provides descriptive information on the environmental information systems registered in the Czech Republic and statistical systems of processing environmental data, such as the statistical and reporting information system (<http://issar.cenia.cz>). At the present time, CENIA is developing the Nationwide Information System for Collection and Evaluation of Information on Pollution of the Environment (NISCEIPE), which includes project tasks such as the Integrated System for Performance of Reporting Duties (ISPRD), Environmental helpdesk and Geoportal Inspire.

The “Guide for Public Library and Information Services of Organisations of the Ministry of the Environment and Co-operating Organisations” has been drawn up and published for the purposes of individual users at [http://www.mzp.cz/C125717D0051E49E/\\$pid/MZPEBFKYTI2N](http://www.mzp.cz/C125717D0051E49E/$pid/MZPEBFKYTI2N).

*Re c): Certain legal regulations (such as the Construction Code, EIA Act, Public Health Protection Act) provide for the duty to publish information in a manner allowing for remote access, which is true, e.g., of draft zoning plans pursuant to the Construction Code. Draft new laws are published on the public administration portal. As regards sectoral or regional plans, policies and other relevant documents, the practice in publishing these documents differs from one institution to another and is not prescribed by any binding regulation. The general public thus becomes acquainted with many strategic documents only within the framework of strategic environmental assessment (SEA).*

*Re d): In the Czech Republic, **reports on the state of the environment** are discussed by the Government and Parliament and published annually. Reports are also published at the regional level and at the level of large cities.*

*Re e): **Generally binding legal regulations** and ratified international treaties are published in the Collection of Laws and the Collection of International Treaties, respectively. The legal regulations in the area of environmental law and political documents are published on the website of the Ministry of the Environment. Furthermore, since 2007, legal regulations under preparation have already been posted on the Internet at the stage of commencement of intersectoral commentary procedure with invitation to the general public to send their comments. Legal regulations are then also published in the Journal of the Ministry of the Environment and information on political and strategic documents in the Bulletin of the Ministry. The Ministry of the Environment has also introduced a system of distribution of issued information materials through regional distribution centres. Every half year, the Ministry of the Environment presents the priorities of the Czech Republic in international agenda of the environment and national legislation on the environment to representatives of NGOs*

and special-interest associations. The Ministry of the Environment also supports translation of Czech legal regulations and the relevant administrative decisions into English so as to facilitate access of the global public to information on the instruments of environmental protection in the Czech Republic (example: CHM of the Cartagena Protocol:

[http://www.mzp.cz/www/webdav\\_biosafety.nsf\\$files/Biosafety/decisiones.html](http://www.mzp.cz/www/webdav_biosafety.nsf$files/Biosafety/decisiones.html) ).

The scope of data published on the website of the Ministry of the Environment in respect of **multilateral environmental treaties** to which the Czech Republic is a party was extended in 2008. The basic objectives and principles of the treaties are explained to the general public; texts of the treaties are available together with the national communications of the Czech Republic provided in respect of the treaties; the website also contains references to the applicable legislation and strategic materials. From its budget, the Ministry of the Environment supports various activities promoting dissemination of information on international treaties and activities of the UN ECE in relation to sustainable development. The Ministry organises, e.g., workshops for the public, travelling exhibitions (e.g. the “Mysterious Carpathians”) and specific information materials (e.g. leaflets on the individual treaties and synergies of the treaties), etc.

Re f): The **Integrated Pollution Register has been put in place, along with the Information System for Performance of Reporting Duties (ISPRD)**, which is used by the polluters to perform their statutory duty to report pollutants discharged into the environment (Act No. 25/2008 Coll., on the Integrated Pollution Register). Those enterprises and companies that have obtained a certificate for their products which allows them to use the “environmentally friendly product” label and that have put in place an environmental management/audit system, can use comparative advantages and mostly provide information on these activities to the general public through the available information sources. Support for **environmental labelling** and environmental management/audit of enterprises provided by the State is based particularly on green public contracts awarded by the State administration. The Public Procurement Act, No. 137/2006 Coll., allows for application of environmental criteria in awarding public contracts, which may include a requirement for the introduction of an environmental management/audit system and environmental properties of products, as appropriate. This procedure is recommended to all governmental authorities through Resolution of the Government of the Czech Republic No. 465/2010 of 14 June 2010, on the Rules of Application of Environmental Requirements in Awarding Public Contracts and in Purchases by Governmental Authorities and Local Governments.

Re g): Information and facts important for the formulation of environmental policies are provided to the general public particularly through the **Statistical Yearbook on the Environment** and the **Report on the Environment of the Czech Republic** (the Ministry of the Environment is currently ceasing to provide these documents in printed form; they are available in electronic form on the websites of the MoE and CENIA, and further distribution will be carried out on CD-ROM carriers).

Systematic publication of materials on public hearings and matters concerned by the Aarhus Convention has yet to be put in place. Information on these hearings is

published ad hoc, inter alia, through the portal supported by the Ministry of the Environment: [www.ucastverejnosti.cz](http://www.ucastverejnosti.cz).

Re h): Provision of information on **environmentally friendly products** is ensured through the website at [www.ekoznacka.cz](http://www.ekoznacka.cz), and at [www.eco-label.com](http://www.eco-label.com) in respect of the European eco-label. The public is informed of these products, inter alia, at key events aimed at the general public which are related to the subject of the environment (fairs, awarding of the prizes of the Minister of the Environment, etc.). Publicity is also ensured through programmes undertaken by environmental education centres supported from the subsidy programmes of the Ministry of the Environment, through CENIA's specialised programme for elementary schools, etc. – cf. also par. f) above.

Re i): The Integrated Pollution Register has been put in place in the Czech Republic on the basis of international (PRTR Protocol), Community (Regulations) and national (laws) legislation.

Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 5.

*The **Uniform Information System on the Environment** with the necessary overlap into other sectors (e.g. agriculture, health) has yet to be created, because adequate requirements have yet to be established in respect of the systems included in the Uniform Information System on the Environment with the aim to link the data with the data in information systems of other sectors (such as agriculture and health). In this sense, the visions of drawing up a strategy of development of the uniform information system or a Government regulation have also not yet been applied. Any “grassroot” initiative is hindered by insufficient financial resources and competence disputes. It is also not always unambiguous in practice as to what information a given public authority should have available.*

*Environmental information may be disclosed, not only through publicly accessible lists or registers, but also through **environmental information centres, environmental consultancy centres** or other contact points for the general public. The information centre of the Ministry of the Environment was newly opened in the building of the Ministry on 22 April 2009 to provide interested persons with information on the environment. Information centres are also operated by protected landscape areas and national parks, as well as municipalities.*

Provide further information on the **practical application of the provisions on the collection and dissemination of environmental information in article 5**, e.g. are there any statistics available on the information published?

Answer:

*The CENIA twinning project, which was aimed to contribute to ensuring a high-quality flow of information among the acquirer, processor and users of environmental information, has been completed. CENIA has been reorganised. The **Uniform Information System on the Environment** as an organisational platform for subsystems*

*in the area of the environment is managed by a separate department of the Ministry, is functioning as a whole and includes not only information systems, but also methodologies, reports, procedures and entities in organisational structures. The administrative agendas following from the legislative provisions and the relevant information systems of public administration that are being elaborated are incorporated in the aforementioned CENIA project, which will also include a knowledge database of solutions to life situations in the area of the environment. This project predetermines the development in public administration in general and has become a sample for the basic register of rights and obligations which is being prepared.*

*Environmental education and public awareness has been strengthened in the regions. Support from the ESF – Operational Programme for Development of Human Resources – and from the Norwegian Financing Mechanism (EEA Financial Mechanism – block grant for NGOs) has been allocated for extension of the network of centres for environmental communication, education and public awareness and environmental consultancy centres. No adequate replacement has yet been found for the 2007-2013 period.*

*The Czech Republic also supports sharing of information on the environment at the regional level. Funds of the Ministry of the Environment are used to support, e.g. the activities of the regional reference centre for soil protection within the UN Convention to Combat Desertification. The website of the centre at <http://rrc.mendelu.cz/cz> includes a database of experts and institutions in the countries of Central and Eastern Europe that are concerned with the issue of soil degradation. The Ministry of the Environment also supports the creation of the GENASIS database, which provides information on contamination of the environment by persistent organic pollutants in a number of countries of the world. The information is available in the Czech and English languages at: <http://www.genasis.cz>. Foreign development assistance (FDA) can serve as the last example in this respect. Information on the strategic materials for Czech FDA and Czech projects in developing and transitional countries concerned with environmental protection is available to the general public on the website of the Czech Development Agency at <http://www.czda.cz/>.*

*It follows from NGOs' practice that, in terms of the requirement for active dissemination of comprehensible information by public administrative authorities, a shortcoming consists in insufficiently user-friendly processing and publication of executive summaries, which are part of the EIA and SEA documents.*

*The practice is complicated by poorly organised publication of information on electronic official boards (this is true particularly of statutory cities); nevertheless, the legal requirement for the publication of information on electronic boards is respected.*

*Journals and bulletins of municipalities are still inadequately used for publishing information on the environment, contemplated projects, processes of environmental impact assessment and public hearings.*

*The programmes of Government meetings and resolutions of the Government are published on the website of the Office of the Government. The discussed documents are not published; the general public may obtain them on request on the basis of Act No.*



106/1999 Coll., on free access to information.

Give relevant web site addresses, if available:

[www.cenia.cz](http://www.cenia.cz)

[www.ippc.cz](http://www.ippc.cz) , <http://www.mzp.cz/ippc>

[www.irz.cz](http://www.irz.cz)

<http://cep.mdcr.cz/dok2/DokPub/dok.asp>

[www.ochranaprirody.cz/](http://www.ochranaprirody.cz/)

[www.ispop.cz](http://www.ispop.cz)

[www.vlada.cz](http://www.vlada.cz)

## **ARTICLE 6 – PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES**

List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in Article 6.

Explain how each paragraph of article 6 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

- a) With respect to **paragraph 1**, measures taken to ensure that:
  - (i) The provisions of article 6 are applied with respect to decisions on whether to permit proposed activities listed in annex I to the Convention;
  - (ii) The provisions of article 6 are applied to decisions on proposed activities not listed in annex I which may have a significant effect on the environment;
- b) Measures taken to ensure that the public concerned is informed, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, of the matters referred to in **paragraph 2**;
- c) Measures taken to ensure that the time frames of the public participation procedures respect the requirements of **paragraph 3**;
- d) With respect to **paragraph 4**, measures taken to ensure that there is early public participation;
- e) With respect to **paragraph 5**, measures taken to encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit;
- f) With respect to **paragraph 6**, measures taken to ensure that:
  - (i) The competent public authorities give the public concerned all information relevant to the decision-making referred to in article 6

- (ii) that is available at the time of the public participation procedure;  
In particular, the competent authorities give the public concerned the information listed in this paragraph;
- g) With respect to **paragraph 7**, measures taken to ensure that procedures for public participation allow the public to submit comments, information, analyses or opinions that it considers relevant to the proposed activity;
- h) With respect to **paragraph 8**, measures taken to ensure that in a decision due account is taken of the outcome of the public participation;
- i) With respect to **paragraph 9**, measures taken to ensure that the public is promptly informed of a decision in accordance with the appropriate procedures;
- j) With respect to **paragraph 10**, measures taken to ensure that when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 are applied, while making the necessary changes, where appropriate;
- k) With respect to **paragraph 11**, measures taken to apply the provisions of article 6 to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

*Answer:*

*Re a): Article 6 covers public participation in decision-making on specific activities with a potentially significant environmental impact, e.g. decision-making on the proposed location of buildings, on construction and activity of major facilities or on permitting placement of products on the market.*

*The basic type of the decision-making process consists in **administrative proceedings** which are held on the basis of the Code of Administrative Procedure (Act No. 500/2004 Coll.). The process of environmental impact assessment (**EIA** process) is a process closed by issuing a non-binding opinion, which plays the role of a professional source material for rendering a decision pursuant to the special legal regulations (typically, a planning permit pursuant to the Construction Code). Based on Annex 1 to the EIA Act, assessment is obligatorily carried out for activities/projects in category I, while an “investigation procedure” is carried out for projects in category II; within this procedure, it is determined whether or not the project should be further assessed. The sense of the assessment process (EIA) is to obtain an objective professional document that can serve as a basis in the permitting procedure. Within the process of environmental impact assessment, the general public has the right to become acquainted with a specific project (documents are published) and its members may express their opinion either in writing in the form of comments or during the public hearing.*

*Locating and permitting construction projects, issuing integrated permits for certain industrial activities and decision-making pursuant to the Water Act, Atomic Act and Mining Act constitute specific types of the decision-making process.*

*According to the Czech laws, participation in decisions on specific activities can be divided into two types, where only one of them (the second type) also entails the right to appeal the decision and further contest it by a court action.*

*The first type of participation involves any natural or legal persons without any limitation. It is based on the concept that general public may raise its comments in writing (or orally if an oral hearing takes place). Consultative participation takes place:*

- in spatial planning procedures or procedures on issuing a regulatory plan (Act No. 183/2006 Coll., the Construction Code)*
- in EIA processes (Act No. 100/2001 Coll.)*
- within the discussion of safety programmes and emergency plans pursuant to Act No. 59/2006 Coll., on prevention of major accidents caused by selected dangerous chemicals or chemical preparations*
- in proceedings concerning permission of individual forms of management of GMOs pursuant to Act No. 78/2004 Coll., on management of genetically modified organisms and genetic products*
- in accordance with Section 90 (2) of Act No. 114/1992 Coll., on nature conservation and landscape protection, activities pursued in direct connection with ensuring defence or security of the State are not subject, amongst other things, to Section 70 of the Act (i.e. participation of citizens, which corresponds to the objectives of the Convention); however, consultative participation of the general public – i.e. raising comments within environmental impact assessment (EIA, SEA) – is possible.*

*The second type of participation applies to non-governmental organizations (rather than to the public in general) and is applicable:*

- in processes that are subject to Section 70 of Act No. 114/1992 Coll., on nature conservation and landscape protection (civic associations or their organisational units whose main objective pursuant to the constitution is nature conservation and landscape protection); this is also true of the spatial planning procedure*
- on the basis of Section 23 (9) of Act No. 100/2001 Coll., on environmental impact assessment, as amended, (“locally competent unit of an association or beneficiary society whose object of activities consists in protection of public interests that are protected pursuant to the special regulations”)*
- in proceedings on issuing an integrated permit pursuant to Act No. 76/2002 Coll., on integrated prevention (“associations, beneficiary societies, unions of employers or economic chambers whose objects of activities include enforcement and protection of professional interests or public interests pursuant to the special regulations”)*
- in administrative proceedings held pursuant to Act No. 254/2001 Coll., on water (civic associations whose objective under their constitution is to protect the environment)*

*Full participation of other entities (individuals, municipalities, “unorganised public”) is generally governed by Section 27 of the Code of Administrative Procedure – i.e. the one who lodged the application is a party to the proceedings or, if proceedings were initiated ex officio, the parties are those whose right or obligation is to be*

*established, changed or cancelled by the ensuing decision or in respect of whom the ensuing decision is to declare that they have or have not a right or obligation, or those who claim so until the contrary is proven. Furthermore, the Act stipulates that the parties also include other persons whose rights or obligations could be directly affected by the ensuing decision. A certain person is also a party if so stipulated by a special law (Section 27 (3) of the Code of Administrative Procedure). This provision is important from the viewpoint of the NGOs – the latter become parties to proceedings primarily on the basis of special laws, e.g. on the basis of Section 70 of the Nature Conservation and Landscape Protection Act (for more, cf. above). In proceedings pursuant to the Construction Code (planning and construction procedures often comply with the definition of “environmental decision-making”), the conditions for participation are stipulated exclusively pursuant to the Code, and the Code of Administrative Procedure is not applicable in this respect.*

*In proceedings on delimitation of a mining area and permitting mining activities, the circle of parties includes (in simple terms) the investor, the owners of the affected properties, the municipality and those who are stipulated as such in special laws – in general, Section 70 of the Nature Conservation and Landscape Protection Act, No. 114/1992 Coll., or Section 23 (9) of the Environmental Impact Assessment Act, No. 100/2001 Coll.*

*In other proceedings – proceedings on locating a nuclear installation, including deposits of radioactive waste, pursuant to the Atomic Act or proceedings pursuant to the Public Health Protection Act (exemption for the operator of a facility generating above-limit noise) – the applicant (i.e. the investor or operator of the installation) is the only party to the proceedings.*

*Re b): The parties are always **informed** of the commencement of proceedings. A special regulation applies to civic associations, which may request to be informed of all the contemplated interventions and administrative proceedings being initiated in cases where the interests of nature conservation and landscape protection could be affected. A request for being informed is valid for one year and must be specified in terms of the substance and place (Section 70 (2) of the Nature Conservation and Landscape Protection). In addition, there also exist a great many specific regulations; e.g., in respect of the spatial planning procedure, the general public is informed by means of a public edict and information provided directly at the place of the planned construction.*

*Re c): The **time frames** stipulated for participation in administrative proceedings vary to a great degree, but are acceptable; information is published on official boards; the 8-day deadline for registration of civic associations in proceedings (8 days from posting) could be considered to be problematic.*

*Re d): Public participation in decision-making **in the initial stage** is ensured by the EIA process, which is, however, separated from the actual decision-making; this is, in turn, reflected in its effectiveness.*

*Re e): Measures taken to encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit, have yet to be adopted.*

*Re f): Based on the Construction Code and the Code of Administrative Procedure, the competent governmental authorities give the public concerned all **information** relevant to the decision-making referred to in Article 6 that is available at the time of the public participation procedure. A problem in practice could lie in interpretation of Section 168 (2) of the Construction Code, which stipulates the conditions under which an applicant can obtain a copy of the construction documentation.*

*Re g): Measures taken to ensure that procedures for public participation allow the public to **submit comments**, information, analyses or opinions that it considers relevant to the proposed activity can be deemed to consist particularly in public hearings (EIA) and public oral hearings (spatial planning procedure).*

*Re h) and i): The Code of Administrative Procedure, the Construction Code and also the Public Health Protection Act stipulate that **account** is mandatorily **taken** in decision-making **of the outcome** of public participation and the general public is informed of the decisions through the official board. Only applicants are served with a written notice.*

*Re j): In the Czech legislation, this provision is concerned particularly with **changes in issued decisions** in proceedings in which the parties to the original proceedings may participate with all the rights as in the original decision-making.*

*Re k): Act No. 78/2004 Coll., on management of **genetically modified organisms** and genetic products allows the general public to participate in decision-making on permitting the introduction of GMOs into the environment. On 6 December 2007, the Czech Republic signed an Amendment to the Aarhus Convention setting out more precise provisions on public participation in decision-making on deliberate release of genetically modified organisms (GMO) into the environment and on adoption of an amendment to the Aarhus Convention.*

Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 6.

*Answer:*

*A certain shortcoming of the Czech legislation could be perceived in the fact that it **does not stipulate a definition of the public concerned.***

*There are also shortcomings in identifying and defining by public administration of the public concerned and in **direct addressing** of the public concerned. The public concerned is interested in the results of decision-making and, thus, it can be assumed that it would be interested in participating in consultations and the subsequent permitting procedure, as appropriate. However, public administration insufficiently utilises the option of directly addressing the public concerned, e.g. through its periodicals, which leads to lesser participation of the general public. Mere publication*

on a website (electronic official board) is currently insufficient for effectively informing the public.

From the beginning of 2006, the bodies of public administration began to proceed pursuant to the new Code of Administrative Procedure. Within the new, more detailed regulation of administrative proceedings, the Code provides in detail for certain procedures. The concept of **binding statements**, which had been issued up to 2006 without the possibility of their later change or review, is important in terms of the rights embodied in the Aarhus Convention, namely the right of the public to participate in decision-making and the right to court protection. A binding statement is issued by an administrative authority in a certain preliminary matter and serves as a basis for the final decision made by another authority in those cases where the legislature resolved to provide for this concept instead of series of several administrative decisions. The procedure in issuing a binding statement is not communicated to the public concerned. Binding statements cannot be separately contested prior to initiation of the subsequent administrative proceedings. Subject to maintaining adequate legal remedies, binding statements that form the basis for the decision in the proceedings may be reviewed in the subsequent proceedings. An instigation to change or cancel a binding statement can be raised even before a decision is issued. The basic form of review by the superior administrative authority, i.e. appeal, is thus available only in respect of the decision that is made on the basis of the binding statement. However, the binding statement may also be contested within the appeal, with a request for its change or cancellation. A binding statement thus can be contested, and also cancelled; however, in practice, this takes place only in a later stage of decision-making. Binding statements concerning the environment are issued particularly in processes preceding the location or permission of construction; the possibility of utilising this procedural remedy in the given proceedings has been introduced, e.g., by the Construction Code and the Nature Conservation and Landscape Protection Act.

In terms of implementation of the Aarhus Convention, there is no uniform regulation of public participation in proceedings with impact on the environment, which means, in practice, that specific proceedings are pursued according to various regulations that also provide for a different scope of the parties to the proceedings; e.g., the Forest Act and the Air Protection Act do not deal with public participation at all.

#### **Changes in the regulation of public participation adopted in 2009-2010:**

*Amendment to Section 70 of Act No. 114/1992 Coll., on nature conservation and landscape protection*

The amendment to the Act **repealed** Section 90 (4), which stipulated that the Nature Conservation and Landscape Protection Act was a **special law** in relation to the regulations on forests, water, construction proceedings and spatial planning, protection of mineral resources, protection of the agricultural land fund, gamekeeping and fishing. However, this amendment did not automatically cancel the special position of the Nature Conservation and Landscape Protection Act; however, this special position now has to be specifically inferred in the individual types of proceedings.

The **system of exemptions** pursuant to Act No. 114/1992 Coll., on nature conservation and landscape protection, and exemptions from the protective conditions in national parks, protected landscape areas and natural monuments, which were granted by the Government without publication and possibility of commenting on them, was **cancelled** in 2009.

Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 6, e.g. are there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this article to proposed activities serving national defence purposes.

Give relevant web site addresses, if available:

EIA/SEA information system - <http://tomcat.cenia.cz/eia/view.jsp>;

<http://eia.cenia.cz/sea/koncepce/prehled.php>

Website of the Green Circle association – [www.ucastverejnosti.cz](http://www.ucastverejnosti.cz)

IPPC website: [www.ippc.cz](http://www.ippc.cz)

Public administration portal: [www.portal.gov.cz](http://www.portal.gov.cz)

Website of the Ministry of the Environment: [www.mzp.cz](http://www.mzp.cz)

## ARTICLE 7

**List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9.**

Answer:

*The public does not always directly participate in the process of preparation of strategic plans in the Czech Republic, but is able to become involved in the process of assessment of the environmental impact of these plans. The requirement of the Aarhus Convention is incorporated in the Czech legislation through Act No. 100/2001 Coll., on environmental impact assessment. The Act defines the affected territorial self-governing units and affected administrative authorities that are involved in the individual phases of the process of environmental impact assessment. The Czech Republic was also one of the first countries to ratify the SEA protocol. Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention to Community institutions and bodies is also applicable in this area; the Regulation has been directly binding from 28 June 2007 for all the Member States of the European Union and enables the public to participate in the preparation of plans and programmes at the European level.*

*The requirement for public participation in the preparation of zoning plans (at regional and local levels) is met by the Construction Code. In addition to the fact that the general public (i.e. everyone) has the right to submit comments on the individual documents prepared in the various phases of zoning, a representative of the public may raise an “objection”, which means that the issued zoning plan must include an administrative decision on the objection, which is subject to appeal; if the appeal is not satisfied, an action may be lodged with an administrative court.*

*The public is also involved in the creation of action plans to reduce noise in the environment, which are drawn up by the Ministry of Transport and regional authorities, where the public participates in commenting on the action plan prior to its approval and adoption.*

**Explain what opportunities there are for public participation in the preparation of policies relating to the environment.**

Answer:

*The public has access to the preparation of policies within the process of environmental impact assessment pursuant to Act No. 100/2001 Coll., on environmental impact assessment. The Act requires the publication of the notification of a strategy (including various policies), which contains information on the strategy being assessed and on the anticipated environmental impacts.*

*In the concluding phases of the process of environmental impact assessment, the Act requires the publication of the draft strategy and documentation of its environmental impact in the SEA information system at <http://eia.cenia.cz/sea/koncepce/prehled.php>. Furthermore, the Act also provides for a mandatory public hearing. The legal regulation does not prevent the party submitting the strategy and the authority that evaluates it from taking a pro-active approach.*

**Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 7.**

*Answer:*

*From the viewpoint of the SEA process and public participation, Act No. 100/2001 Coll. is in accordance with the Aarhus Convention and the public can participate in each step of the SEA process. At the present time, the Act has no inadequacies from the standpoint of public participation. However, the NGOs point out that the non-existence of the definition of the public concerned pursuant to Art. 2 of the Aarhus Convention complicates the possibility of directly addressing the public concerned in the preparation or assessment of strategic documents (policies, zoning plans, etc.).*

**Provide further information on the **practical application of the provisions on public participation in decisions on specific activities in article 7.****

*Answer:*

*The assessment of strategies is characterised by **small public interest** in submitting comments and public hearings, which is caused by the high degree of generality and complexity of the strategies being assessed.*

***Positive practical examples***

- introduction of a central information system for environmental impact assessment and its active implementation*
- issuing methodology for the SEA process, including recommendations for public participation in the SEA process*
- publication of the notification – active participation by the public and NGOs in submitting comments*
- publication of working drafts of the strategy and working outputs of SEA during the process of preparation of the strategy (SEA of the Operational Programme “Prague – Competitiveness”, SEA of the Concept of the State Tourism Policy; SEA of the National Developmental Plan of the Czech Republic for the 2007-2013 period and others.)*
- utilization of the media (internet, press, radio, etc.) for public participation in the SEA process – e.g. SEA of the National Developmental Plan for the 2007-2013 period; SEA of the Operational Programmes “Business and Innovations”, “Transport”, “Prague – Competitiveness” and others)*
- organisation of meetings with the public in the initial phases of the SEA process – beyond the scope of the Act (e.g. SEA of the Transport Policy of the Czech Republic; SEA of the Concept of the State Tourism Policy of the Czech Republic for the 2007-2013 period; SEA of the Strategy of Regional Development of the Czech Republic); suitable time and place of holding the public hearing; proper dealing with the comments*



*submitted by citizens and publication of the manner of settlement of the comments – in the form of the settlement table*

*- co-operation between the entities submitting strategies and SEA assessors, on the one part, and the working groups formed by the professional public, on the other part (e.g. SEA of the Sustainable Development Strategy of the Ústí Region – not required by law – beyond the scope of law)*

*- strengthening procedural rights (i.e. public participation) in the creation of zoning plans (i.e. spatial planning) by means of a representative of the public.*

***Improvement of the following areas could be considered in the future from the viewpoint of practice:***

*- dates and times of public hearings suiting the public concerned*  
*- the form and scope of information on the public hearing and possibility of participation in the hearing*

*- elimination of the formal character of the process of settlement of comments submitted by the public; specification of the responsibility for settlement of comments*

*- raising interest of the public in participation in the processes of environmental planning*

*- improving the clarity of documentation, increasing the quality of executive summaries of the conclusions of assessment*

*- increasing awareness of the SEA process among the professional and lay public*

*- dissemination of knowledge of the public administration of techniques for public participation.*

*The aforementioned examples of good practice and challenges for improvement were obtained on the basis of the performed or pending SEA processes.*

**Give relevant web site addresses, if available:**

*EIA/SEA (<http://eia.cenia.cz/sea/koncepce/prehled.php>)*

## **ARTICLE 8**

**Describe what efforts are made to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To the extent appropriate, describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9.**

**Answer:**

*In relation to modernisation of public administration and wider involvement of the public, a **new process of Regulatory Impact Assessment (RIA)** was introduced in 2008 in the sense of the Aarhus Convention. Several documents were adopted to ensure proper functioning and development of the procedural rules for the performance of regulatory impact assessment:*

- General principles of regulatory impact assessment*
- Amendment to the Legislative Rules of the Government*
- Application of the General Principles for Regulatory Impact Assessment (RIA) and establishment of a Board for the Regulatory Reform and Effective Public Administration*
- Methodology of determining the planned costs of performance of public*

administration

- Methodology of involving the public in the preparation of governmental documents
- Draft procedure for introducing a methodology of involving the public in the preparation of governmental documents

Regulatory impact assessment (**RIA**) should be the first step taken by public administration in the preparation of all regulations. All central administrative authorities in the Czech Republic must evaluate the impacts of all types of regulation, i.e. instruments whereby the executive branch implements the requirements on individuals and groups (typically laws, Government regulations, decrees, etc.). By way of exception, this does not apply, e.g., to the State budget, crisis situations and the state of legislative emergency, technical and procedural amendments. Any exceptions from the process of assessment must always be justified. RIA includes a system of analytical methods aimed to systematically evaluate the negative and positive impacts of the proposed or existing legal regulations in economic, social and environmental areas. The recommendatory General Principles of Regulatory Impact Assessment have been developed to ensure a uniform procedure in impact assessment; these Principles provide in broad terms for public participation in regulatory impact assessment.

The **Legislative Rules of the Government** deal with the commentary procedure for laws, regulations and decrees. They specify the “compulsory places for submitting comments” (central governmental authorities and other institutions), other places for submitting comments (the public) and the deadlines for preparing comments, and stipulate the basic rules for addressing comments. Publication of the legal regulations in accordance with Art. 5 (3) and Art. 8 is ensured through Art. 2 (5) of the LRG. A draft legal regulation is published on the Public Administration Portal, which is publicly accessible. All places for submitting comments, including the public, are subject to the basic deadline for submitting comments, which equals 15 business days (20 in respect of draft laws). The party submitting the draft legal regulations may extend the deadline. Article 7 (3) (f) of the LRG provides for the method of settlement of comments submitted by the public. Any substantial comments that were not satisfied must be set out in the submission report for the draft legal regulations with justification why they were not satisfied. The parties submitting the draft legal regulations are not obliged to discuss the comments with the public; nevertheless, they may voluntarily opt to do so (Art. 5 (8) of the LRG).

In addition to the above-described procedure in publication, in July 2007, the **Ministry of the Environment** independently created the section “Legislation under preparation” on its website, where it places all draft legal regulations falling within its competence, including the accompanying documents and information on the state of discussion. Based on its internal guideline (No. 3/2001), the Ministry of the Environment also keeps a list of all non-compulsory places for submitting comments, which also includes some expert environmental organisations. These places for submitting comments are provided with draft laws and decrees within external commentary procedures and, if fundamental comments have been raised, they are invited to an oral hearing.

Describe any **obstacles encountered** in the implementation of Article 8.

**Provide further information on the practical application of the provisions on public participation in the field covered by Article 8.**

Answer:

The introduction of a governmental database of non-governmental entities for potential

*consultations in the preparation of laws and programmes or policies – DATAKO – can be considered to be a positive step. The same can be said of the approach taken by the Ministry of the Environment, which included representatives of NGOs among non-compulsory places for submitting comments with the possibility of discussing comments that were designated as fundamental. With respect to the requirements of the Aarhus Convention, it would be suitable if this approach were also adopted by other ministries.*

Give relevant web site addresses, if available:

<http://www.mvcr.cz/clanek/hodnoceni-dopadu-regulace-ria.aspx>

<http://kormoran.vlada.cz/>

<http://portal.gov.cz>

[http://www.mzp.cz/cz/pripravovana\\_legislativa](http://www.mzp.cz/cz/pripravovana_legislativa)

## **ARTICLE 9**

List legislative, regulatory and other measures that implement the provisions on access to justice in Article 6.

Explain how each paragraph of article 9 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

- a) With respect to **paragraph 1**, measures taken to ensure that:
  - (i) Any person who considers that his or her request for information under article 4 has not been dealt with in accordance with the provisions of that article has access to a review procedure before a court of law or another independent and impartial body established by law;
  - (ii) Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law;
  - (iii) Final decisions under this paragraph are binding on the public authority holding the information, and that reasons are stated in writing, at least where access to information is refused;
- b) Measures taken to ensure that, within the framework of national legislation, members of the public concerned meeting the criteria set out in **paragraph 2** have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6;
- c) With respect to **paragraph 3**, measures taken to ensure that, where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene

provisions of national law relating to the environment;

- d) With respect to **paragraph 4**, measures taken to ensure that:
  - (i) The procedures referred to in paragraphs 1, 2 and 3 provide adequate and effective remedies;
  - (ii) Such procedures otherwise meet the requirements of this paragraph;
- e) With respect to **paragraph 5**, measures taken to ensure that information is provided to the public on access to administrative and judicial review.

*Access to justice in environmental matters means particularly the possibility to challenge administrative acts or omissions of administrative authorities before an independent and impartial body established by law. In the Czech Republic, these bodies are the courts (their independence is guaranteed by the Constitution of the Czech Republic). The area of access to justice in environmental matters is **part of the general regulation of administrative justice**, which is embodied in Act No. 150/2002 Coll., the Code of Administrative Justice. Pursuant to the Code of Administrative Justice, court review is relevant in those cases where rights were affected or procedural rights infringed during the previous proceedings. For natural persons, locus standi is always examined in each specific case and is granted if the plaintiff's right has been affected (including the right to a favourable environment) or if his procedural rights have been infringed. Locus standi is questionable in respect of civic associations, which do not benefit from the right to a favourable environment and can thus turn to the courts only on the grounds of infringement of procedural rights.*

*Re a): Access to justice in respect of the right to **information** is ensured in terms of the legislative framework; everyone has the right to bring a matter to courts. There are certain shortcomings in practice consisting in excessively long deadlines, impossibility to invoke an accelerated procedure, the court decision being concerned with the justification of refusal of information, rather than ordering the provision of information (Act No. 123/1998 Coll., on free access to information on the environment).*

*Re b): Given the fact that the Czech legislation does not stipulate a definition of the public concerned, permission proceedings involve particularly NGOs as the parties (based on component laws) in addition to the owners of the affected properties. In case of court proceedings pursuant to **Art. 9 (2)** of the Aarhus Convention, NGOs are usually deprived of substantive rights to a favourable environment and the decisions are thus reviewed particularly from the procedural viewpoint.*

*Special locus standi with the aim to protect the public interest is also granted by law to the Supreme State Attorney (Section 66 (2)), and it is also vested in any person who is explicitly authorised to this effect by a special regulation or an international agreement that is part of the legislation.*

*An important type of court proceedings in terms of implementation of Art. 9 (2) is also represented by proceedings on cancellation of a general measure or its part (cf. Sections 101a to 101d of the Code of Administrative Justice), because zoning plans of municipalities and regions are issued in this form. An application for cancelling a general measure may be lodged by anyone who claims that his rights were infringed by the general measure. The court must rule on the application within thirty days after the*

*perfect application reached the court.*

*An amendment to Act No. 100/2001 Coll., on environmental impact assessment, came into effect on 11 December 2009; this amendment inserted new paragraph 10 into Section 23, reading as follows: “A civic association or a beneficiary society whose objects of activities include protection of the environment, public health or cultural monuments, or a municipality affected by a project, provided that they submitted a written opinion on the documentation or statement within the deadlines stipulated by this Act, may lodge an action on the grounds of violation of this Act and claim that the court cancel the ensuing decision issued in proceedings pursuant to special legal regulations, through the procedure pursuant to the Code of Administrative Justice. An action does not have suspensory effect.”*

*Re c): Pursuant to the Code of Administrative Justice, locus standi is conditional on direct infringement of the rights by an administrative decision or omission, i.e. it is **necessary to demonstrate direct infringement of the right to a favourable environment**. The Code of Civil Procedure provides for private-law actions, which do not extend to the area of public law (law of the environment). A certain quasi-exemption consists in the possibility of lodging a “neighbour action”, i.e. an action whereby the plaintiff claims that his neighbour refrain from impairing the exercise of the plaintiff’s ownership rights beyond an appropriate degree – again, such a dispute would take place within the sphere of private law; if the action is successful, the court can merely order the neighbour to refrain from the given activity. Nevertheless, the public has the right to defend itself against inactivity of administrative authorities and submit instigations for initiation of proceedings ex officio or claim review proceedings before the superior administrative authority as a party to the proceedings (cf. the Code of Administrative Procedure).*

*Re d): **According to the law**, an action for unlawfulness of a decision pursuant to Section 65 of the Code of Administrative Justice **does not have suspensory effect**; nevertheless, the court may grant the action such an effect on the basis of Section 73 of the Code of Administrative Justice. The latter provision stipulates three preconditions for granting an action suspensory effect (enforcement of the decision would result in irreparable harm for the plaintiff, the granting of the suspensory effect will not inappropriately affect the rights acquired by third parties and this is not at variance with the public interest). Especially the precondition of irreparable damage that must be threatening directly the plaintiff, as a condition for granting suspensory effect, is difficult to demonstrate, also in those cases where the plaintiff is threatened by damage which can be compensated in money, the more so in those cases where irreparable harm is threatening the environment or where the plaintiff is an NGO. In its decision File No. 8 As 26/2005, the Supreme Administrative Court ruled that court proceedings may be initiated also in those cases where such harm is likely to be incurred; this ruling was referred to in several later decisions. The case-law of administrative courts (particularly the judgment of the Supreme Administrative Court of 29 August 2007, Ref. No. 1 As 13/2007-63), which unambiguously requires the satisfaction of applications for granting suspensory effect to actions lodged by members of the public concerned with the meaning of the Aarhus Convention and the EIA Directive, so that the afforded court protection is timely and fair, is also a positive signal.*

*Re e): The **duty to provide advice** is borne by both administrative and judicial bodies; however administrative bodies do not provide information on the possibility of court*

protection.

Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 9.

*Problematic aspects of the legislation in the Czech Republic from the standpoint of implementation of the Aarhus Convention are as follows:*

- *excessively restrictive interpretation of the provisions on locus standi by bodies providing court review*
- *substantive errors in administrative decisions that are hard to challenge*
- *problems related to granting suspensory effect to an administrative action*
- *court review does not lead to effective remedy of errors.*

***Restrictive interpretation of locus standi:***

*Based on the definition stipulated by the law (Section 65 of the Code of Administrative Justice), the courts usually state that an action may be successfully brought only if the contested decision infringed the rights of the plaintiff. Such infringement often cannot be proven in respect of a civic association, because NGOs are able to successfully demonstrate only infringement of their procedural rights, although the Constitutional Court has ruled that the right to a favourable environment embodied in Art. 35 (1) of the Charter is a constitutionally guaranteed right of everyone.*

*In contrast, Art. 9 (3) requires that individuals and NGOs be able to challenge acts and omissions by public authorities and private persons which contravene legal regulations relating to protection of the environment, i.e. that they be able to lodge an action in public interest. This provision can be construed as direct and directly applicable entitlement and, since the Aarhus Convention is part of the Czech legislation, action could be lodged on the basis of Section 66 (3) of the Code of Administrative Justice (Special locus standi in respect of protection of public interest). However, while the Supreme Administrative Court accepted, in its recent judgments, the principle that international treaties have priority in case of conflict with a law and laws are to be interpreted in accordance with such treaties, it nevertheless rejected direct applicability of Art. 9 (3) of the Aarhus Convention in the Czech legislation, because, in its opinion, Art. 9 (3) is not “self-executing” (and there is also no legal regulation that would transpose Art. 9 (3) to the Czech laws); on these grounds, it ruled that all the conditions for individuals or NGOs to be able to directly enforce rights arising out of Art. 9 (3) of the Aarhus Convention before the courts had not been fulfilled (cf. Resolution of the Supreme Administrative Court File No. 3 Ao 2/2007).*

***Substantive errors in administrative decisions that are hard to challenge***

*As stated above, court protection (lodging an administrative action for unlawfulness of a decision or inactivity of an authority) can be afforded only if the plaintiff’s rights or procedural rights have been infringed (for the conditions for NGOs, cf. the explanation related to Article 6). The participation of NGOs in administrative proceedings is regulated in various terms. For example, the Nature Conservation and Landscape Protection Act (Act No. 114/1992 Coll.) allows for participation of NGOs in administrative proceedings because they represent citizens; in court review, they are no longer afforded protection of the right to a favourable environment. For this reason, actions lodged by NGOs are usually effective only in those cases where unlawfulness of the contested decision was caused by breach of procedural rules. Some courts tend to reject substantive review, although they are obliged to undertake full review according to law. The participation of associations in proceedings is regulated in relation to provision for protection of the environment, especially preventative*

protection as the most effective method. Members of the public concerned whose rights are not directly dealt with in the proceedings (e.g. they are not the owners of adjacent properties), but nevertheless have a legitimate interest in the decision, participate in the proceedings through NGOs (cf. Section 70 of the Nature Conservation and Landscape Protection Act) and they are therefore unable to independently lodge an administrative action. Furthermore, the possibility of requesting substantive review by associations also follows from the constitutionally guaranteed principle that all the parties to proceedings have equal rights before the courts.

#### **Problems related to granting suspensory effect to an administrative action**

According to the law, an action for unlawfulness of a decision pursuant to Section 65 of the Code of Administrative Justice does not have suspensory effect; nevertheless, the court may **grant the action such an effect** on the basis of Section 73 of the Code of Administrative Justice. The latter provision stipulates three preconditions for granting an action suspensory effect (enforcement of the decision would result in irreparable harm for the plaintiff, the granting of the suspensory effect will not inappropriately affect the rights acquired by third parties and this is not at variance with the public interest). Especially the precondition of irreparable damage that must be threatening directly the plaintiff, as a condition for granting suspensory effect, is difficult to demonstrate particularly in those cases where the plaintiff is threatened by damage which can be compensated in money, but the irreparable harm is threatening the environment or the plaintiff is an NGO. The case-law of administrative courts (particularly the judgment of the Supreme Administrative Court of 29 August 2007, Ref. No. 1 As 13/2007-63), which unambiguously requires the satisfaction of applications for granting suspensory effect to actions lodged by members of the public concerned with the meaning of the Aarhus Convention and the EIA Directive, so that the afforded court protection is timely and fair, is also a positive signal. Based on these judgments, the courts of lower instance have also began to afford suspensory effect, mostly in respect of actions against a permission to fell trees or against a construction permit; on the contrary, suspensory effect is still not afforded to actions against a planning permit. The arguments put forth by the courts in respect of rejection of suspensory effect are newly based, not on the grounds of impossibility of occurrence of harm, as was the case previously, but rather on the grounds of insufficient evidence of serious harm or a public interest in continuing the construction. In its decision File No. 8 As 26/2005, the Supreme Administrative Court **ruled** that court proceedings may be initiated also in those cases where such harm is likely to be incurred.

**Amendment to Act No. 100/2001 Coll.**, on environmental impact assessment, came into effect on 11 December 2009; this amendment inserted new paragraph 10 into Section 23, reading as follows: “A civic association or a beneficiary society whose objects of activities include protection of the environment, public health or cultural monuments, or a municipality affected by a project, provided that they submitted a written opinion on the documentation or statement within the deadlines stipulated by this Act, may lodge an action on the grounds of violation of this Act and claim that the court cancel the ensuing decision issued in proceedings pursuant to special legal regulations, through the procedure pursuant to the Code of Administrative Justice. An action does not have suspensory effect.” This amendment is problematic in two aspects. The first lies in automatic exclusion of suspensory effect, which may deprive court protection of its effect at variance with the requirements of the Aarhus Convention and the case-law of the Supreme Administrative Court. The second issue is related to the fact that locus standi is yet again afforded only to legal entities – civic associations,

*beneficiary societies and municipalities – and not to natural persons who are members of the public concerned.*

***Court review does not lead to an effective remedy:***

*Pursuant to paragraph 4 of Article 9, review of a decision should ensure an adequate and effective remedy. This requirement is not met in practice in this country. Even in cases where the plaintiff is successful in the case, review has no effect on the state of affairs. The disproportionately long court proceedings and especially the unrecognized suspensory effect of the action mean that a successful outcome of the court action is useless to the plaintiff because, e.g., the construction has long been completed and the governmental authorities are not willing to put the judgment into effect. However, the progressive ruling of the Supreme Administrative Court of 28 June 2007 (File No. 5 As 53/2006) states that failure to afford suspensory effect to an action (lodged by the public concerned) may not result in the fact that the project against which the action is aimed has already been implemented at the time when the decision is made. This ruling directly refers to the requirements of Art. 9 (4) of the Convention. The court practice has gradually been changing on the basis of this ruling.*

*The right of access to justice thus remains defined only generally in Act No. 150/2000 Coll., the Code of Administrative Justice. According to the Code, an action may be lodged by a person who states that his rights have been infringed by an official decision „whereby his rights or duties are established, changed, cancelled or determined with binding effect“ and also by a party to administrative proceedings that states that its rights have been violated by the procedure of the administrative authority in a manner that could lead to an unlawful decision. The interpretation is such that the former definition should apply to applicants (e.g. investors) and other entities about whose rights a decision is made “directly”, while the latter applies to other parties, including associations (cf. above- restrictive interpretation of locus standi). Thus, theoretically, nothing has changed in the concept according to which associations can successfully lodge an action only if, in administrative proceedings in which they participated (or in which they were entitled to participate, but this was not the case due to a mistake made by the administrative authority), their procedural rights were breached in a manner such that this could, according to the court, cause an unlawful decision. Court practice is not uniform; there exist both cases where the courts continue to reject actions brought by associations and do not consider them in rem, as well as judgments that, on the basis of an action brought by an association, dealt with the merits of the case and interpreted the conditions for locus standi in conformity with the provisions of the Aarhus Convention*

*The duration of court proceedings also substantially affects the effectiveness of the decision in respect of the right to information. Even if the court rules that failure to provide information was unlawful, this is mostly so at a time when the applicant is no longer interested in the information. Furthermore, the court is also unable to order the authority that was requested to provide the information to actually provide it (based on Act No. 123/1998 Coll., which implements Art. 4 and 5 of the Convention). While an amendment to Act No. 106/1999 Coll. requires the courts to do so, in combination with other procedural changes, this has yet to increase the effectiveness of practical decision-making.*

**Provide further information on the practical application of the provisions on access to justice pursuant to article 9, e.g. are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other**



barriers to access to justice?
<p><i>Answer:</i></p> <p><i>The main problem related to legal protection in the area of protection in environmental matters (similar to legal protection in general) remains the slow work of the courts, the length of resolving of individual cases and the high fraction of decisions that are issued only in the second, appellate instance.</i></p> <p><i>The number of criminal offences in the area of the environment, where the situation is stabilised, is another quantity that is monitored statistically. The structure of decision-making by the Czech Environmental Inspectorate is an important indicator (cf. Table No. 2 in the Annex).</i></p>
Give relevant web site addresses, if available:
<a href="http://www.mzp.cz">www.mzp.cz</a> <a href="http://www.cizp.cz">www.cizp.cz</a> <a href="http://www.nssoud.cz/anonymous.php">www.nssoud.cz/anonymous.php</a>

**Table 1: Statistics of criminal offences in the area of environmental protection**

			<b>Cases found</b>	<b>of which:</b>	
	<b>TSC*</b>	<b>Name</b>	<b>Total</b>	<b>investigati on closed</b>	<b>under investigation</b>
2010, up to 31 Aug	<b>850</b>	Threat of damage to the environment - intentional	21	13	11
	<b>851</b>	Threat of damage to the environment - negligence	9	4	6
2009	<b>850</b>	Threat of damage to the environment - intentional	24	18	9
	<b>851</b>	Threat of damage to the environment - negligence	17	9	8

Source: Ministry of the Interior of the Czech Republic (<http://www.mvcr.cz>)

\*Tactical-statistic classification

**Table 2: Activities of the Czech Environmental Inspection in 1998 -2009**

Type of activity	1998	1999	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of inspections, revisions and controls	15 182	16 125	19 454	17 774	18 359	18 032	17 254	16 649	15 791	14 255	17 432
Decisions made in administrative proceedings (final)	9 192	7 380	9 375	7 971	3 186	9 661	8 495	12 445	10 754	13 595	14 706
Statements for other governmental	7 443	8 259	9 592	10 264	10 845	12 308	11 868	11 329	14 449	12 013	12 006

Type of activity	1998	1999	2001	2002	2003	2004	2005	2006	2007	2008	2009
authorities											
Participation in resolving accidents (E-records, U-participation) <sup>1</sup>	175	112	104	E 246 + 133 floods U 247	E ??? U 159	E 306 U 120	E 264 U 105	E 205 U 105	99	65	80
Dealing with complaints, notifications and instigations	737	712	764	864	1 253	1 654	1 419	1 927	2 464	2 279	2 731

Source: Czech Environmental Inspectorate (Annual Reports) <http://www.cizp.cz>

\*